JOHN PUDDICOMBE WILKINS & 2 OTHERS v. JOHN PATRICK KENELM WILKINS & ANOTHER.

[Orig. Civ. Juris. (Thomson, J.) January 29, 1951]
[F.M. — Civil Application No. 2 of 1950]

Civil Procedure — Appeal — Application for leave to appeal out of time.

This was an application for leave to appeal out of time. It appeared that a mistake had been made as to the law and that was the reason for the appeal being out of time.

Held, on the authority of D.C. Butler-Madden v. Krishnasamy(1) and Hendry v. de Cruz(3) that the application must be dismissed.

Cases referred to :—

(1) *D. C. Butler-Madden v. Krishnasamy* (1947) M.U.L.R. 163; (1947) M.L.J. 182.
(2) *Re Coles and Ravenshear* (1907) 1 K.B. 1.
(3) *Hendry v. de Cruz* 1949 M.L.J. Supplement 25.
(4) *Manickam v. Tremelbye Rubber Company* (1949) M.L.J. 90.
(5) *Re Macadam (No. 2)* (1950) 1 All E.R. 659.

CIVIL APPLICATION.

S. M. Sharma for the applicants.

S. N. Veerasamy for the respondents.

Cur. Adv. Vult.

Thomson, J. : — It is with very great regret that I find myself compelled by authority to dismiss this application.

I am not concerned here to decide whether or not this appeal is out of time. If it is in time there is of course nothing to prevent it going on. On the present application, however, I am bound to deal with the matter on the basis that it is out of time.

If it is out of time, then it is out of time for the reason that a mistake has been made as to the law. It is clear from such report as is available of the proceedings of the Court of Appeal in the case of *D. C. Butler-Madden v. Krishnasamy*(1) that the decision in that case was based on the view that the principles relating to the exercise of discretion in this sort of matter as laid down by the English Court of Appeal in the case of *Re Coles and Ravenshear*(2) are applicable to this country. In that case it was held that a mistake in law on the part of the appellant's legal advisers was not sufficient ground for granting special leave to appeal under R.S.C. O. 58 r. 15 as it stood prior to 1909 which corresponds to the Court of Appeal Rules, 1948, r. 11 under which the present application is made.

The decision in *Butler-Madden's* case was followed by the Court of Appeal in the case of *Hendry v. de Cruz*(3) and was followed by Sir Harold Willan, C.J. in the case of *Manickam v. Tremelbye Rubber Company*(4). I am aware that that last case could with little difficulty be distinguished from the present one but I do not rely on it. I rely on the principles of *Butler-Madden's* case and the case of *Hendry v. de Cruz*.

The latest available authority as to the scope of *Ravenshear's* case is to be found in the judgment of the Court of Appeal in the case of *Re Macadam (No. 2)*(5).

Before proceeding to the actual decision in that case, there is a point in connection with it which is of interest here. It was a case where certain proceedings in bankruptcy had been taken in the County Court. There was an unsuccessful appeal to the Divisional Court. What the Court of Appeal was concerned with was an application for extension of time to appeal against the decision of the Divisional Court, and Sir Raymond Evershed, M.R., made the following observation which is of some interest :—

> The appeal was heard by the Divisional Court on January 23, 1950, and was then dismissed, but the order was not drawn up until January 31. It is not in doubt that the time for the purpose of an appeal ran from the former date, January 23.
>
> It is also not in doubt that, subject to any powers we may have.....the period for entering an appeal was twenty-one days from that date."

Turning to the merits of *Macadam's* case, it was a case where notice of appeal was given late because as a result of a conversation between the appellant's solicitors and his counsel the solicitors were misled into thinking that they had six weeks in which to appeal instead of three weeks. That conversation, of course, is very similar to the conversation that was the cause of all the trouble in *Ravenshear's* case. When the matter came before the Court of Appeal on an application for extention of time the Court brought the case within the principles of *Ravenshear's* case on grounds that are set out at length in the report. The first of these grounds was that the property in dispute was and remained vested in trustees and who had no beneficial interest in it. That, it was pointed out, ensured the maintenance of the *status quo*. In the second place, leave to appeal had already been granted by the Divisional Court and it was held that that *pro tanto* amounted to an instruction to the other party of an intention to appeal. In the third place, the application was not substantially resisted by the other party. Reviewing these considerations the Master of the Rolls said that they could be fairly taken into

account although "it would be quite improper . . . . to do other than loyally follow" *Ravenshear's* case, and then he went on to say:—

"I think that there is just sufficient — but, in my judgment, only just — to say that there are special circumstances which would justify the court in this case in granting the application sought."

As I understand the position, what was said in the judgment in *Macadam's* case represents the very farthest limits to which the principles of *Ravenshear's* case have been stretched, and, accepting these limits, I think I am bound to say that in the present case the present applicants have failed to bring themselves within them.

Accordingly the application will have to be dismissed with costs. The matter, of course, can come at a later stage before the full Court and no one will be happier than myself if I am held to be wrong.

Application dismissed.

In re T. A. S. SANMUGAM PILLAY, DECEASED.

[Orig. Civ. Juris. (Taylor, J.) March 22, 1951]

[K.L. — Letters of Administration No. 18 of 1950]

Probate and Administration Enacment s. 24(iii) — Whether an unregistered purchaser should or could petition for distribution or administration — "Creditor" — Meaning of.

Sanmugam was the proprietor of six lots of land, valued at $16,000 and charged to the Planters' Loans Board for $5,000 and interest; he sold the land, subject to the charge, to a married woman named Annaratnam for $11,000 in cash, she undertaking to pay off the charge. She went into actual possession of the land. The Board knew nothing of this arrangement at the time and it was contrary to the terms of the charge.

Sanmugam died. He left no other estate in Malaya; his next-of-kin declined to apply for letters of administration and consented to a grant to the purchaser.

In the petition, the six lots were scheduled as assets at their full value and the liabilities were stated to be the charge and the purchase money. On the face of the petition the purchaser was shown as a creditor for the amount of cash which she had paid.

The Registrar ascertained the true position by further enquiry and referred to a Judge the question whether the petitioner was a creditor within the meaning of the Enactment and competent to petition as such.

Notice was given to the Loans Board but they did not wish to be heard.

Held, that a purchaser of land, whose title has not been registered before the death of his Vendor, is a creditor of the deceased within the meaning of the Probate and Administration Enactment (Cap. 8).

PETITION for Letters of Administration.

Petitioner in person.

Cur. Adv. Vult.

Taylor, J. : — The petition was wrongly drawn. What the petitioner may be entitled to, and what she really claims, is not the money but a clean title to the land. I therefore ordered the petition to be amended by stating the assets as "a bare registered interest in the lands comprised in" . . . . (the respective titles) and the liabilities as nil, (except for administration expenses).

It may well be that from the point of view of the Loans Board the estate of the deceased is liable to them on the charge but the petitioner must state the position as between herself and the deceased. She undertook to pay off the charge and therefore it is now her liability not his. Also he was never liable to refund the purchase money. He sold the land outright and put the purchaser in possession. Neither he nor his representatives have any further beneficial interest in the land so there are no substantial assets in the estate. There is no debt in money outstanding and therefore there are no substantial liabilities. The estate consists of nothing but the bare registered interest in the land and the only liabilities are for estate duty and administration expenses. How then can it be said that the petitioner is a creditor of the estate?

This question has general importance at the present time. During the war many smallholders bought and sold lands when it was difficult or impossible for them to effect registration. Some of these vendors and purchasers have since died and in a number of cases there have been differences of opinion between Collectors and Assistant Registrars as to whether an unregistered purchaser should or could petition for distribution or administration. Such a question arises in a variety of circumstances but the present case is typical of many.

The deceased registered proprietor sold all his land and was paid in full. Is the unregistered purchaser a creditor?

Ordinarily a creditor means a person to whom money is owing but this is not exhaustive. Fundamentally the word credit implies belief. When it is said of a witness that his credit is good it means that he can be believed. When it is said of a customer that his credit is good it means that the shopkeeper believes that he can and will pay and therefore supplies goods without immediate payment, that is: — on credit.

Similarly, when a man buys land without a formal transfer he believes that the vendor can and will